IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1023 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PURSHOTTAMDAS MANGALDAS PATEL - Appellant(s)
Versus
POST MASTER GENERAL & 3 - Defendant(s)

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Appearance :

MR MC SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 3.
MR RAJNI H MEHTA for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant herein – original plaintiff has challenged the judgment and decree passed by the learned City Civil

Court, Ahmedabad, dated 27th September, 1982 passed in City Suit No. 566 of 1979 in partly decreeing the suit only to the extent of Rs.25,000/-.

2. The plaintiff filed a suit bearing Civil Suit No.566 of 1979 in the City Civil Court, Ahmedabad, to recover Rs.53,213.50 ps with interest at the rate of 12% per annum alleging inter alia that he wanted to send parcel valued at Rs.50,621/-, the description of which, is given in para – 3 of the plaint. He decided to send it through registered parcel which was also insured and for that purpose booked one parcel from the Head Post Office, Ahmedabad. The insurance for this parcel from the post office was taken for the amount of Rs.10,000/-. The document for this parcel were entrusted by the plaintiff to the Bank of Baroda, Gandhi Road Branch, Ahmedabad, for dispatch to M/s. Henery Gure in & Cie at Paris through Jordan Bank, Paris. The said parcel was dispatched by the plaintiff on 28th June, 1976. It was the case of

the plaintiff that as the Bank of Baroda was negligent in sending the document, the person at Paris could not approach the postal authorities in time for obtaining the delivery. The parcel was not available for delivery and the plaintiff also did not get back this parcel. It appears that the plaintiff has taken an additional insurance of Rs.25,000/- for securing the risk of the loss of the said parcel from Oriental Fire General Insurance Company, Bombay. The plaintiff preferred a claim first with the postal authority and thereafter, before the insurance company. As the parcel was insured for the sum of Rs.10,000/-, the postal authorities paid Rs.10,000/-. However, the insurance company did not settle the claim for the insured amount of Rs.25,000/- and as according to the plaintiff, the parcel contain goods worth Rs.50,621/- and the said loss had occurred on account of negligence shown by the postal authorities. According to the plaintiff, the postal authorities are also liable for remaining amount of Rs.40,421/- and therefore, the

plaintiff filed the aforesaid civil suit.

3. The suit was resisted by all the defendants. The written statement at Exh.21 was filed on behalf of the Post Master General, at Exh.20 is the written statement filed by the insurance company and Exh.27 is the written statement filed by the Bank of Baroda. The learned trial Court raised the issues at Exh.62. The plaintiff was examined at Exh.63 and one Manubhai Dudhia was examined on behalf of the Bank of Baroda vide Exh.84. The plaintiff relied upon the documentary evidence produced vide list Exhs.3, 36, 49 and 60 and the defendant No.3 i.e. the Bank of Baroda relied upon the documentary evidence produced vide list at Exh.31. Considering the documentary as well as oral evidence, the learned trial Court held that the insurance company was liable to make the payment of loss to the tune Rs.25,000/- only towards the insurance claim and so far as Bank of Baroda is concerned, the suit came to be dismissed and for the rest of the claim against the postal authorities, the learned trial Court

held that as the parcel was insured for an amount of Rs.10,000/- only by the postal authorities, the liability of the postal authorities would be restricted to Rs.10,000/- only and accordingly, partly decreed the said suit. Being aggrieved and dissatisfied with the same, the present First Appeal is filed.

4. This Court has considered the documentary as well as oral evidence from the Records & Proceedings as well as the judgment under challenge. Shri Devang Vyas, learned advocate appearing on behalf of the original defendant No.4 – Oriental Fire General Insurance Company, has submitted that so far as insurance company is concerned, no appeal was filed by the insurance company and the insurance company accepted the judgment and decree and according to his instructions, even the plaintiff was already paid the amount of Rs.25,000/- with interest. So far as rest of the claim is concerned, it is required to be noted that so far as the postal authority is concerned, the

parcel was insured for an amount of Rs.10,000/- only and therefore, the learned trial Court has rightly refused to pass decree for the balance amount, over and above the amount of Rs.10,000/- and as stated hereinabove, the sum assured i.e. Rs.10,000/- was already paid by the postal authorities. This Court is in complete agreement with the reasoning and the judgment and decree passed by the learned trial Court. Once the parcel is insured for a particular amount, than, the liability for loss of the said parcel would be to the extent of the sum assured only, otherwise, the purpose for taking insurance would be frustrated.

5. For the reasons stated above, the appeal is required to be dismissed and is accordingly dismissed, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.